

FORMAL COMPLAINT



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ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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T-01051B-08-0506

T-03693A-08-0506

IN THE MATTER OF THE COMPLAINT OF
PAC-WEST TELECOMM AGAINST QWEST
CORPORATION AND REQUEST FOR
IMMEDIATE COMMISSION ACTION

) DOCKET NO. T-03693A-08-_____
)
) **COMPLAINT AND REQUEST FOR**
) **IMMEDIATE COMMISSION**
) **ACTION**
)
)

Pursuant to A.A.C. R14-3-106(M), Pac-West Telecomm, Inc. ("Pac-West"),
brings the following Complaint against Qwest Corporation ("Qwest") and alleges as
follows:

NATURE OF THE ACTION

1. On September 26, 2008, Qwest unilaterally ceased processing all Pac-West
orders and provisioning requests across all Qwest territories including Arizona. On
September 23, 2008 Qwest notified Pac-West that it "will begin the disconnection
process of all Pac-West Telecomm Inc. services, effective 10/07/2008." Qwest contends

that Pac-West owes Qwest \$301,419.16 for virtual services. The disconnect notice sent to Pac-West by Qwest is attached hereto as Exhibit 1.

2. Pac-West has disputed these charges and has asked Qwest to follow the procedure for resolving billing disputes specified in the Interconnection Agreement applicable at the time the billing dispute arose. During the relevant period, Pac-West and Qwest were parties to the *Interconnection Agreement between Qwest Corporation and Level 3 Communications, LLC* ("Interconnection Agreement") which governs interconnection arrangements and payment obligations between the two companies.

3. Section 5.18 of the Interconnection Agreement provides a "Dispute Resolution" procedure. Section 5.18.3 allows arbitration before the American Arbitration Association or J.A.M.S./Endispute, at the election of the Party initiating dispute resolution under Section 5.18. The Interconnection Agreement does *not* permit Qwest to unilaterally disconnect Pac-West or its customers in the event of a billing dispute. Pac-West seeks an immediate order prohibiting Qwest from unilaterally disconnecting Pac-West, or its telecommunications customers, until this dispute is fully resolved.

4. As of September 26, 2008, Qwest unilaterally ceased processing all Pac-West orders and provisioning requests across all Qwest territories, including Arizona. Pac-West has been unable to order or modify any customer circuit or port orders. This Qwest action has directly impacted end users. Pac-West seeks an immediate order requiring Qwest to process all Pac-West orders and provisioning requests pending the full resolution of this billing dispute.

PARTIES

5. Plaintiff. Pac-West is a public service corporation that is certified to provide competitive telecommunications services in Arizona. Docket No. T-03693A-99-0032 (Decision No. 61903). Pac-West is authorized to provide switched and non-switched local exchange and long distance service in Arizona. The Pac-West corporate headquarters is located at 4210 Coronado Avenue, Stockton, California 95204.

6. Defendant. Qwest is an incumbent local exchange company ("ILEC"), as defined in 47 U.S.C. § 251(h), that provides local exchange and other telecommunications services throughout the State of Arizona.

JURISDICTION

7. Commission Jurisdiction. The Commission has jurisdiction over this Complaint and over Qwest pursuant to 47 U.S.C. §§ 251-52, A.R.S. §§ 40-203, 40-246, 40-249, 40-329 and A.A.C. R14-3-106.

LEGAL OVERVIEW

8. Interconnection Agreement. The Interconnection Agreement between Pac-West and Qwest is the result of Pac-West's request, pursuant to 47 U.S.C. § 252(i), to opt into the Local Interconnection Agreement Between Qwest Corporation and Level 3 Communications, LLC. Pac-West's opt-in to the Level 3 Interconnection Agreement became effective March 22, 2008.

FACTUAL OVERVIEW

9. Invoicing by Qwest. On July 1, 2008 Qwest billed Pac-West \$271,764.99 for installation and monthly charges of "FX-Like" facility compensation for April

through July 2008. The July invoice was the first invoice received by Pac-West under the new Interconnection Agreement.

10. Conversion to FX-Like Facilities. Pursuant to the Interconnection Agreement Section 7.2.2.1.7.9, Pac-West was entitled to order and participate in the design of FX-Like facilities required under the Agreement. Pac-West did not submit a project request, network diagram, or an order for the FX-Like facilities as required under the Agreement. The Agreement anticipates that the CLEC and Qwest will work together to gradually and cooperatively convert Pac-West to a FX-Like service. Qwest's unilateral decision to bill for FX-Like facilities without Pac-West's involvement violated the terms of the Interconnection Agreement.

11. Bill and Keep Traffic Exchange During Interim Period. As provided in Section 7.2.2.1.7.11, Qwest was obligated to exchange traffic on a bill and keep basis until the interim period for designing FX-Like Traffic facilities concluded. Qwest never received an order from Pac-West for such FX-Like Traffic facilities and never cooperated with Pac-West on designing such facilities. Until such time as the facilities were jointly agreed upon, traffic should have been billed on a bill and keep basis.

12. Correspondence. Pac-West sent correspondence and email to Qwest disputing the amount owed. In July of 2008, Pac-West completed Qwest's "Customer Billing Dispute Notification Form." Numerous email communications were also exchanged by the parties in an effort to reach agreement on what the Interconnection Agreement required. These documents are attached as Exhibit 2. Throughout this

dispute, the parties have worked actively to communicate their respective positions and correct any mistakes of fact or analysis. Unfortunately, those efforts have not succeeded.

FIRST CLAIM FOR RELIEF

Declaratory Judgment Precluding Disconnection by Qwest

13. Plaintiff incorporates the allegations of paragraphs 1 through 12 above.

14. Commission action is proper because there is a present, substantial and justiciable controversy between the parties concerning Qwest's authority to unilaterally disconnect Pac-West, or its customers, due to a billing dispute. Qwest should be prohibited from disconnecting service to Pac-West or its customers pending resolution of this dispute.

15. Accordingly, the Commission should declare that Qwest may not discontinue service to Pac-West or its customers, or otherwise compromise Pac-West's ability to serve its customers, pending resolution of this dispute.

SECOND CLAIM FOR RELIEF

16. Plaintiff incorporates the allegations of paragraphs 1 through 15 above.

17. The Interconnection Agreement, as amended, is a legal and binding contract between Qwest and Pac-West that was approved by the Commission.

18. The Interconnection Agreement (Section 7.2.2.1.7.11) requires Qwest to exchange traffic on a bill and keep basis until the FX-Like Traffic facilities are implemented. Qwest never received an order from Pac-West for such FX-Like Traffic facilities and never cooperated with Pac-West on designing such facilities.

19. Qwest has breached the Interconnection Agreement by prematurely charging Pac-West for facilities when the billing system was, according to the Interconnection Agreement, bill and keep.

20. The Commission should therefore preclude Qwest from bringing any future action demanding payment for amounts billed by Qwest for FX Like facilities that are not cooperatively designed and agreed upon.

PRAYER FOR RELIEF

WHEREFORE, Pac-West prays for the following relief:

A. An Order prohibiting Qwest from disconnecting Pac-West (or its customers) or otherwise compromising Pac-West's service to customers because of this good faith billing dispute.

B. An Order directing Qwest to immediately begin processing and continue processing all provisioning and order requests submitted (and previously submitted) by Pac-West.

C. An Order from the Commission requiring that Qwest comply with the Interconnection Agreement, and specifically that Qwest reduce its invoices to Pac-West for the FX Like facilities in question.

D. Referral to the Commission mediation program for Commission Staff assistance in resolving this billing dispute. Proceeding pursuant to the Commission's informal complaint system will be without prejudice to Pac-West's right to file and prosecute a formal complaint if the matter cannot be properly adjusted informally. While the Interconnection Agreement states that a billing dispute may be referred to arbitration,

Pac-West would like as an intermediary measure to attempt to resolve this dispute through mediation with Staff.

E. Such other or further relief as the Commission finds fair, just and reasonable.

RESPECTFULLY SUBMITTED this 1st day of October 2008.

OSBORN MALEDON PA

By Joan S. Burke
Joan S. Burke
2929 North Central, Suite 2100
Phoenix, Arizona 85012
(602) 640-9356
E-mail: jburke@omlaw.com

Attorneys for Pac-West Telecomm, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and 13 copies of the foregoing Complaint with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

I hereby certify that I have this day served the foregoing Complaint on all parties of record in this proceeding by mailing a copy thereof, properly addressed with first class postage prepaid to:

Norman G. Curtright
Corporate Counsel
Qwest
4041 N. Central Avenue, 11th Floor
Phoenix, Arizona 85012

Ernest G. Johnson, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Maureen Scott
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Dated this 1st day of October, 2008.

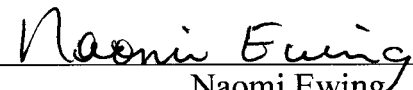

Naomi Ewing

Exhibit 1



September 23, 2008

Pac-West Telecomm Inc.
Kyle Bertrand
4210 Coronado Avenue
Stockton, CA 95204

Document Number: WLC&C.09.23.08.C.022016
Subject: Undisputed Past Due Balances

Letter sent via Email and UPS Overnight

This letter is to inform you that Pac-West Telecomm Inc. is in default of payment on its Qwest account(s) as per the letter dated 08/29/2008. This letter constitutes further written notice of non-payment as may be required under your applicable contract, tariff, and/or state utility commission rules and regulations. Failure to respond to this letter or submit payment may result in additional treatment activity (discussed below) being initiated ten (10) days after the date of this letter.

In order to assure that no additional new charges are accrued on your accounts, we have initiated a hold on all ASR and/or LSR service order activity, submitted by you, effective 09/23/2008. All outstanding charges are due prior to restoration of service order activity. Furthermore, in accordance with applicable contract, and/or tariffs, Qwest may condition its continuing provision of services to Pac-West Telecomm Inc. on its receipt of a security deposit.

As of today, the total past due balance on your Qwest account(s) is \$301,419.16. It is imperative we speak with you immediately regarding payment of your account. If Qwest does not receive payment in full on or before 10/07/2008, we will begin the disconnection process of all Pac-West Telecomm Inc. services, effective 10/07/2008. Please be aware that Qwest may be notifying state utility commissions regarding the action discussed in this notice and may petition state commissions as needed for the authority to take appropriate actions, up to and including termination of services. Please comply with any applicable state customer notification requirements.

Please send payment to the appropriate remittance address located on your return document of your bill.

Please be advised that late payment charges will be assessed in accordance with applicable contracts and/or tariffs to all past due balances. If service disconnection occurs, all outstanding balances, a security deposit and all other applicable charges to have service re-established will be required.

In the event of disconnection, Qwest strongly recommends that you notify your end-users of the upcoming disconnection, so that they may avoid any interruption to their services.

If you have already paid in full, please disregard this notice.

Qwest appreciates your business, and we look forward to working with you to resolve these issues so that we can continue to provide you with excellent customer service. If you have questions regarding this notice please do not hesitate to contact me at the number or email listed below. Thank you in advance to your attention to this matter.

Sincerely,

Susie Turner
Qwest Corporation
+1 800 335 5672 x4226
Fax : +1 800 335 5651
Susie.Turner@qwest.com

Note: If you have received this notice, it is because you have been identified as having billing, credit, or payment responsibilities for your company. If you are not the correct individual please verify who in your company is the appropriate contact(s) for these types of notices. Please insure that individual subscribes to the Billing Notices for the Local side of business, prior to anyone unsubscribing to ensure that your company receives the appropriate notifications.

To subscribe or unsubscribe to billing notices please go to the "Subscribe/Unsubscribe" web site and follow the instructions (refer to BILLING - Local). The site is located at: <http://www.qwest.com/wholesale/notices/cnla/maillist.html>.

Exhibit 2

Pac-West

Lynne Martinez
Director Regulatory Affairs
4210 Coronado Avenue
Stockton, CA 95204
209-926-3235
lmartin@pacwest.com

Via email and overnight mail

September 25, 2008

Dan Hult
Director – Carrier Relations
1314 Douglas On the Mall
13th Floor
Omaha, NE 68102
dan.hult@qwest.com

Re: Billing Dispute

Dear Mr. Hult:

This letter responds to the September 23, 2008, letter from Ms. Susie Turner to Pac-West Telecomm, Inc. (Pac-West) threatening disconnection of Pac-West services. Pac-West disputes the charges contained in Qwest Invoice Numbers 249282, 252902, and 254183.

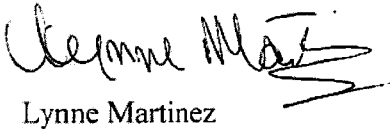
These charges were not lawfully assessed under applicable Pac-West/Qwest interconnection agreement. Pac-West submitted the attached "Customer Dispute Billing Notification Form" to Qwest on July 23, 2008. Additionally, the attached emails reflect that Pac-West's continued dispute of these charges. As a factual matter, the charges in question are not "undisputed," as Ms. Turner has asserted in her September 23rd letter.

As of today September 25, 2008, Qwest has locked Pac-West out of its carrier services portal and is threatening disconnection. Effective immediately, Pac-West requests access to Qwest's carrier services portal while resolution of this dispute is pursued. Pac-West also requests immediate assurance that Qwest will not begin the disconnection process for Pac-West services. Qwest is obligated under Section 5.18. of the ICA to follow the dispute resolution process set forth in the Interconnection Agreement.

Please contact me with these assurances no later than September 30, 2008.

Pac-West

Sincerely,


Lynne Martinez

Cc: Larry Christensen, Qwest Director – Interconnection Agreements,
larry.christensen@qwest.com
Susie Turner, Qwest, Susie.Turner@qwest.com
Jeff Noland, Qwest Corporate Counsel, jeff.noland@qwest.com
Joan Burke, Osborn Maledon, P.A., Counsel to Pac-West, jburke@omlaw.com



Customer Billing Dispute Notification Form

Date: 7/23/2008 MM/DD/YYYY

Date Received: 7/23/2008 MM/DD/YYYY

Customer Information

Customer Name: PacWest Telecomm, Inc.	Customer Account #: 249282
Customer Contact Name: Qwest	Email Address: sjames@pacwest.com
Telephone #: 2094447517 Ext:	Fax #: (209)444-3903

Dispute Information

Type of Dispute: MISC (See Pages 2-3 for a List of Dispute Types and Required Supporting Documentation)	
Related to Previous Dispute: (Yes/No) NO	If Yes, Previous Dispute Ticket Number:
Invoice Begin Date: 07/01/2008	Product Account ID: Qwest LEXIS BILLING
Invoice End Date: 07/01/2008	Invoice Number(s): 249282
Estimated \$ Amount of Dispute: 271764.99	Dispute Amount Paid: \$0.00
Circuit ID(s): AZ VPOI	
<p>Explanation of Dispute (in detail): Qwest started billing us on the 07/01 invoice. PacWest's current ICA states that the virtual POIs for FX Like Traffic will be mutually agreed upon by both companies and as a result the costs would be mutually agreed upon. PacWest had a few calls with Qwest to review how Qwest would be determining the amounts to bill and at the time we had our calls, Qwest informed PacWest that they hadn't derived any numbers. There were no follow up meetings prior to receipt of the first invoice.</p>	
Supporting Documentation Included: D	

Account Information

Account Manager:	Account Sales Rep:
Account Collector:	

Disputes can be submitted online using Remote Control and the Online Dispute Management Tool, OR by completing and submitting this form to Qwest by mail or email:

Mail: Attn: <Account Collector>
500 E. 84th Ave. Unit D, Thornton, CO, 80229
Email: wholesale.billing@qwest.com

Lynne Martinez

From: Sally James
Sent: Tuesday, July 29, 2008 9:26 AM
To: 'Lund, Callis'
Cc: Ethan Sprague; Kyle Bertrand; Lynne Martinez
Subject: RE: az-vpoi dispute

Callis,

Our position is that these charges should have been "mutually negotiated and agreed upon". Our two companies were supposed to have a coordinated effort on determining where the POIs should be and as a result of the POI discussion, we'd agree upon the costs. PacWest started these discussions with Qwest – we had a few conference calls with Barb Newman and a couple of other folks. On the last call, we were notified the costs hadn't been determined and less than a month later we were billed. The discussions were never completed and mutually agreed upon by both companies.

Sally
Sally James

Switched Access Engineer
Pac-West Telecomm, Inc.

Operations Offices:
4210 Coronado Avenue
Stockton, CA 95204
Tel: + 1 209 444 7517
Fax: + 1 209 444 3903
sjames@pacwest.com
www.pacwest.com

Corporate Offices:
555 12th Street
Suite 250
Oakland, CA 94607
Tel: + 1 510 380 5971
Fax: + 1 209 444 3903
sjames@pacwest.com
www.pacwest.com

From: Lund, Callis [mailto:Callis.Lund@qwest.com]
Sent: Tuesday, July 29, 2008 8:50 AM
To: Sally James
Subject: az-vpoi dispute

Sally,

I'm looking into the dispute on az-vpoi for installation charges. Do you have any names at Qwest that PacWest made

agreements with on the charges? That way I can verify the charges, from what I can tell the charges are per the ICA 7.2.2.1.7.6. Let me know then I can check further.

Thanks,

Cal

This communication is the property of Qwest and may contain confidential or privileged information. Unauthorized use of this communication is strictly prohibited and may be unlawful. If you have received this communication in error, please immediately notify the sender by reply e-mail and destroy all copies of the communication and any attachments.

Lynne Martinez

Subject:

FW: Dispute Resolution for Pac-West Telecomm Inc. (2821) AZ ID 63614

7/1/08

From: Sally James

Sent: Tuesday, August 19, 2008 7:58 AM

To: 'Callis.Lund@qwest.com'

Cc: joshua.nielsen@qwest.com

Subject: RE: Dispute Resolution for Pac-West Telecomm Inc. (2821) AZ ID 63614 7/1/08

Callis,

PacWest does not concur with the resolution of this dispute. We have made every effort to work with Qwest to identify the charges applicable under the ICA. Qwest has not asked us for any additional information and we were not aware you needed anything additional.

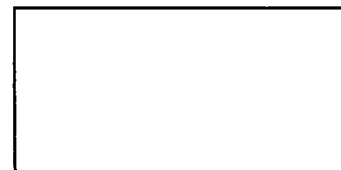
From: Callis.Lund@qwest.com [mailto:Callis.Lund@qwest.com]

Sent: Tuesday, August 19, 2008 7:53 AM

To: Sally James

Cc: joshua.nielsen@qwest.com

Subject: Dispute Resolution for Pac-West Telecomm Inc. (2821) AZ ID 63614 7/1/08



August 19, 2008

sally james

Pac-West Telecomm Inc.

Dear sally james:

This letter summarizes activity on the following dispute:

Main Billing Account Number: AZ- PAW-E-74

Bill Date: 7/1/2008

Customer Dispute Number:

Qwest ID #: 63614

Amount in Dispute: \$271,764.99

Below are the details related to this dispute.

ID	Type	Status	Amt	Items	Resolved QWEST	Resolved Customer	Interest Credit	Resolved	ST/Cost Docket, Tariff,SGAT/Contract/SO
1	Cost Docket NRC	Resolved	\$271,764.99	1	\$271,764.99	\$0.00	\$0.00	8/19/08	
Item Totals			\$271,764.99	1	\$271,764.99	\$0.00	\$0.00		

The installation charges and monthly charges for April through July 2008 are valid. For FX like facility compensation per section 7.2.2.1.7.6 or your ICA. PacWest has not contacted Qwest to discuss any of these charges since the dispute was

received 28 day's ago. This dispute is now closed in Qwest favor and the monies are now due.

Resolved items will remain closed unless further disputes related to this item are submitted to Qwest in writing.

Thank you,

Callis Lund

Callis.Lund@qwest.com

800 335 5672 x4069

QWEST Wholesale Billing Department